

RULE CrRLJ 4.4
SEVERANCE OF OFFENSES AND DEFENDANTS

(a) Timeliness of Motion; Waiver.

(1) A defendant's motion for severance of offenses or defendants must be made before trial, except that a motion for severance may be made before or at the close of all the evidence if the interests of justice require. Severance is waived if the motion is not made at the appropriate time.

(2) If a defendant's pretrial motion for severance was overruled he or she may renew the motion on the same ground before or at the close of all the evidence. Severance is waived by failure to renew the motion.

(b) Severance of Offenses. The court, on application of the prosecuting authority, or on application of the defendant other than under section (a), shall grant a severance of offenses whenever before trial or during trial with consent of the defendant, the court determines that severance will promote a fair determination of the defendant's guilt or innocence of each offense.

(c) Severance of Defendants.

(1) A defendant's motion for severance on the ground that an out-of-court statement of a codefendant referring to him or her is inadmissible against him or her shall be granted unless:

(i) the prosecuting authority elects not to offer the statement in the case in chief; or

(ii) deletion of all references to the moving defendant will eliminate any prejudice to him or her from the admission of the statement.

(2) The court, on application of the prosecuting authority, or on application of the defendant other than under subsection

(i), should grant a severance of defendants whenever:

(i) if before trial, it is deemed necessary to protect a defendant's rights to a speedy trial, or it is deemed appropriate to promote a fair determination of the guilt or innocence of a defendant; or

(ii) if during trial upon consent of the severed defendant, it is deemed necessary to achieve a fair determination of the guilt or innocence of a defendant.

(3) When such information would assist the court in ruling on a motion for severance of defendants, the court may order the prosecuting authority to disclose any statements made by the defendants which he or she intends to introduce in evidence at the trial.

(d) Failure To Prove Grounds for Joinder of Defendants. If pursuant to section (a), a defendant moves to be severed at the conclusion of the prosecuting authority's case or of all the evidence, and there is not sufficient evidence to support the grounds upon which the moving defendant was joined or previously denied severance, the court shall grant severance if, in view of this lack of evidence, failure to sever prejudices the moving defendant.

(e) Authority of Court To Act on Own Motion. The court may order a severance of offenses or defendants before trial if a severance could be obtained on motion of a defendant or the prosecuting authority.

[Adopted effective September 1, 1987; amended effective September 1, 2007.]
